

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Harry Bodemann)
Dist. 12, Map 39, Control Map 39, Parcel 106.57,) Blount County
S.I. 000)
Residential Property)
Tax Year 2006)

INITIAL DECISION AND ORDER DISMISSING APPEAL

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$155,200	\$225,400	\$380,600	\$95,150

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on December 13, 2006 in Maryville, Tennessee. In attendance at the hearing were Mr. and Mrs. Bodemann, the appellants, Mike Morton, Blount County Property Assessor, and staff members Barry Mathis and Bobby Stinnett.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an 8.5 acre tract improved with a single family residence located at 4163 Benny Delozier Lane in Maryville, Tennessee.

I. Jurisdiction

The threshold issue in this appeal concerns jurisdiction. This issue arises from the fact that the disputed appraisal was not appealed to the Blount County Board of Equalization.

The administrative judge finds that Tennessee law requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board is permitted only if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(a)(3) & 67-5-903(c). Nevertheless, the legislature has also provided that:

The taxpayer shall have right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

Tenn. Code Ann. § 67-5-1412(e). The Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the 'reasonable cause' provisions to waive these requirements except where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control.

Associated Pipeline Contractors, Inc., Williamson County, Tax Year 1992, Assessment Appeals Commission (Aug. 11, 1994). *See also John Orovets*, Cheatham County, Tax Year 1991, Assessment Appeals Commission (Dec. 3, 1993). Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayers must show that circumstances beyond their control prevented them from appealing to the Blount County Board of Equalization.

The taxpayers essentially testified that they did not appeal to the local board because they were unaware of their right to appeal.

The assessor of property contended that this appeal should be dismissed for two reasons. First, the taxpayers conceded receiving the assessment change notice issued on May 12, 2006. Second, pursuant to Tenn. Code Ann. § 67-5-508, the assessor gave published notice on May 18, 2006 of the dates the local board would be in session to hear appeals and that "[f]ailure to appear and appeal an assessment becoming final without further right of appeal."

Respectfully, the administrative judge finds the taxpayers failed to establish that their failure to appeal to the Blount County Board of Equalization resulted from a circumstance beyond their control. The administrative judge finds that ignorance of the statutory procedures to appeal does not constitute a circumstance beyond the taxpayers' control. Moreover, the taxpayers timely received an assessment change notice as well as notice published in the local newspaper.

II. Value

Based upon the foregoing, the administrative judge finds it is technically unnecessary to address the issue of value since the taxpayers' appeal must be dismissed due to lack of jurisdiction. However, in order to expedite matters in the event of further appeal, the administrative judge will briefly address the issue of value.

The taxpayers basically argued that they believed their appraisal was excessive because of the amount it increased as a result of the 2006 countywide reappraisal program. The taxpayers also noted that their taxes had increased significantly as well.

The assessor of property contended that subject property should remain valued at \$380,600.¹ In support of this position, three improved and two vacant land sales were introduced into evidence.

Since the taxpayer is appealing from the determination of the Blount County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the fair market value of subject property as of January 1, 2006 constitutes the relevant issue. The administrative judge finds that the Assessment Appeals Commission has repeatedly rejected arguments based upon the amount by which an appraisal has increased as a consequence of reappraisal. For example, the Commission rejected such an argument in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) reasoning in pertinent part as follows:

The rate of increase in the assessment of the subject property since the last reappraisal or even last year may be alarming but is not evidence that the value is wrong. It is conceivable that values may change dramatically for some properties, even over so short of time as a year. . .

The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value. . . .

Final Decision and Order at 2. The Commission has also ruled that taxes are irrelevant to the issue of value. See *John C. & Patricia A. Hume* (Shelby Co., Tax Year 1991).

ORDER

It is therefore ORDERED that this appeal be dismissed for lack of jurisdiction and the following values remain in effect for tax year 2006:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$155,200	\$225,400	\$380,600	\$95,150

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

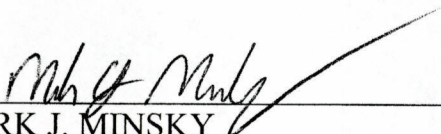
Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

¹ The assessor agreed to field check the listing of the upper story on the property record card and, if appropriate, issue a correction of error pursuant to Tenn. Code Ann. § 67-5-509. The area in question is presently appraised at \$9,131 after depreciation. Consequently, any correction will not result in a particularly significant reduction in value.

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 4th day of January, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Harry Bodemann
Mike Morton, Assessor of Property